

SEP 11 2006**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS****NOT FOR PUBLICATION****UNITED STATES COURT OF APPEALS****FOR THE NINTH CIRCUIT****JAAFAR C. BASEER,****Petitioner - Appellant,****V.****JAMES E. HALL, Warden,****Respondent - Appellee.****No. 05-55274****D.C. No. CV-04-01828-JVS****MEMORANDUM***

**Appeal from the United States District Court
for the Central District of California
James V. Selna, District Judge, Presiding**

**Argued and Submitted August 17, 2006
Pasadena, California**

Before: KOZINSKI, O'SCANNLAIN, and BYBEE, Circuit Judges.

Jaafar Baseer appeals the district court's denial of his petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Baseer contends that use of his prior nonjury juvenile adjudication to enhance his sentence under California's Three Strikes Law violated his due process and jury trial rights. The California court's

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

decision to use Baseer's prior juvenile adjudication as a predicate offense in calculating his strikes was not an unreasonable application of clearly established federal law as determined by the Supreme Court. *See Clark v. Murphy*, 331 F.3d 1062, 1069 (9th Cir. 2003) ("[T]he *only* definitive source of clearly established federal law under AEDPA is the holdings (as opposed to the dicta) of the Supreme Court as of the time of the state court decision."); *Boyd v. Newland*, 393 F.3d 1008, 1017 (9th Cir. 2004) (holding that the use of a nonjury juvenile adjudication as a sentencing enhancement was not contrary to nor involved an unreasonable application of Supreme Court precedent). Moreover, the state court's decision was not an unreasonable determination of the facts in light of the evidence presented. Even assuming the district court erred in concluding that Baseer had not requested a jury trial on a third issue, Baseer cannot demonstrate that the state court's decision was "based on" the alleged factual error, 28 U.S.C. § 2254(d)(2), or that the decision was "defective in some material way," *see Taylor v. Maddox*, 366 F.3d 992, 1000 (9th Cir. 2004).

Baseer has also raised an uncertified issue in conformance with 9th Cir. R. 22-1(e). We find that the California Appellate Court's construction of that state's "three strikes" law was not so unreasonable as to constitute a due process violation. Because defendant has thus not "made a substantial showing of the denial of a

constitutional right,” 28 U.S.C. § 2253(c)(2), and has failed to raise this specific claim in the courts below, we deny his motion to expand the certificate of appealability.

AFFIRMED; MOTION DENIED.